



COLORADO
Department of Revenue

Taxation Division

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GIL-16-006

May 18, 2016

XXXXXXXXXXXXXXXXXX
Attn:XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Hotel Fees and Online Travel Companies

Dear XXXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance to determine whether certain hotel related fees and hotel rooms reserved online via online travel companies are subject to Colorado state and local sales tax.

The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 1 CCR 201-1, 24-35-103.5.

The Department treats your request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction. If you would like the Department to issue a private letter ruling on the issues you raise, you must submit a new request and provide the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

1. Are certain hotel related fees subject to state and local sales tax?
2. Are hotel rooms reserved online via online travel companies subject to Colorado sales and use tax at the Contract Rate or OTC Website Rate?

Background

Company is a hotel management company that operates a hotel facility in Colorado. Company will enter into group sales agreements (“Agreement”) that include various fees to be charged in certain circumstances. The following are six fees that may be charged by the hotel:

- Early departure fee: A fee is charged to a guest in the event that a guest who has reserved a room within a group's¹ block of rooms checks out prior to the guest's reserved checkout date, unless the guest advises the hotel at or before check in.
- Room attrition fee: A rate for each room night utilized below the number of nights reserved pursuant to the Agreement. The amount is a reasonable estimate of the harm the attrition will cause Company, and Company agrees that, after receiving payment of this fee, will not seek additional damages. Any early departure fees will be deducted from any amount owed by the group for sleeping room attrition.
- Food and beverage attrition fee: Each Agreement sets forth a minimum food and beverage revenue as part of an event. If the group consumes less food and beverage than the minimum, the group must pay Company a fee in the amount of the difference between what was actually spent on food and beverage and the food and beverage minimum.
- Cancellation fee: If a group decided to cancel the event at any time after the execution of the Agreement, the following cancellation charges apply:

Time	Percentage
<input type="checkbox"/> Date of signature to 190 days prior to arrival	25% total revenue
<input type="checkbox"/> 189 days to 120 days prior to arrival	50% total revenue
<input type="checkbox"/> 119 days to 90 days prior to arrival	75% total revenue
<input type="checkbox"/> 89 days to arrival	100% total revenue

- No-show fee: Company's guests must put a deposit in the amount of the room rental rate plus applicable taxes to reserve a room. Failure to cancel the room within the prescribed period of time or failure to occupy the room results in a forfeiture of this deposit as a no-show fee.
- Meeting room cancellation fee: Hotel requires a deposit in order to reserve a meeting room. Failure to cancel the room within the prescribed period of time or failure to occupy the room results in a forfeiture of this deposit as a cancellation fee.

In addition, Company will enter into contracts with online travel companies ("OTC") in which Company agrees to charge the online travel company a certain room rate ("Contract Rate") for each room reserved via the OTC's website. The OTC then offers rooms to the public on its website at a rate above the Contract Rate ("OTC Website Rate"). Customers who reserve a room on the OTC's website pay the OTC Website Rate and applicable sales or lodging taxes on the Contract Rate. The OTC then remits the Contract Rate amount and the applicable sales or lodging taxes to Company and keeps the excess.

Structure of Analysis

To determine whether certain hotel related fees and hotel sales are subject to tax, the Department will examine the following questions:

1. Are the items taxable under § 39-26-104(1), C.R.S.?

¹ We assume that the reference to "group" is to a person or entity that entered into the Agreement and not to guests. We also assume that the group organizer, not the guest, pays the Attrition rates and the guest, not the group organizer, pays the Cancellation and No Show fees.

- a. Are the items a charge for a room or accommodation as defined in § 39-26-102(11), C.R.S.?
 - i. Is a charge greater than 50% of the daily reservation room rate pursuant to 1 CCR 201-5, SR 22?
 - b. Is the item food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business?
2. Is the item eligible for any exemptions?

Discussion

Fees

Colorado levies sales tax on charges for living accommodations and meals.² The Department has issued guidance on cancellation fees in connection with living accommodations in Department Rule 1 CCR 201-5, Special Regulation Sales Tax 22, Hotels and Motels, which provides, in part:

Deposit Forfeits and Cancellation Charges: Charges made by a hotel or entity listed under §39-26-102(11), C.R.S. shall be classified for taxation as follows:

- a) When the charge is greater than 50% of the daily reservation room rate, as a payment for the room and therefore fully taxable under §39-26-102(11), C.R.S. unless the room would be fully exempt for charitable, government or school use
- b) When the charge is 50% or less of the daily reservation room rate, it shall be classified as a cancellation charge not subject to sales tax.

Early departure fee: The early departure fee appears to be a cancellation fee because the guest has essentially cancelled all or part of their reservation. As a result, the 50% rule, as set forth above, applies to such charges.

Room attrition fee and Food and beverage attrition fee: The attrition fees are not cancellation charges. Attrition fees are more accurately characterized as a pricing mechanism by which a retailer adjusts for a volume discount. A volume discount is a lower per unit charge if the buyer purchases a specified number of units. For example, a retailer may offer to sell one shirt for the full price or three shirts for 70% of the full price. In the context of the hotel rooms and meals, the hotelier offers a volume discount rate if the group books rooms and meals in excess of a certain threshold. Attrition fees are a way of adjusting the price to the higher, non-discounted rate when the group does not purchase rooms and meals at the specified volume threshold. When attrition fees are applied, the purchase of rooms and meals are not cancelled but, rather, these are not purchased at the volume at which the hotelier provides a discount. Thus, the rule regarding the cancellation charge does not apply. Instead, tax is calculated on the price paid by the guests plus any additional amount paid by the group organizer (i.e., the attrition rate).³ Therefore, tax on meals and lodging must be calculated by including the attrition fees.

² §§ 39-26-104(1)(e) and (f) and 102(11), C.R.S.

³ It does not matter that the fee is paid by the group rather than the guest. A retailer's sales tax liability is based on its "gross taxable sales" and includes all revenues received for taxable services and goods. §§ 39-26-102(5) and 105, C.R.S.

Cancellation fee: Revenues from the cancellation fee presumably include both room and meal revenues. Company must make a reasonable determination of how much of the revenue is related to the price for living accommodations and then apply the 50% rule, set forth above, to those revenues. The Department does not have guidance on the treatment of cancellation fees to the extent that they apply to meals. The Department declines to address this specific issue in the context of a general information letter.

No-show fee: The no-show fee appears to be a cancellation fee because the guest has essentially cancelled all or part of their reservation. As a result, the 50% rule, as set forth above, applies to such charges.

Meeting room cancellation fee: A meeting room is not a living accommodation and, therefore, is not subject to tax. Department Rule 1 CCR 201-5, Special Regulation 22, sets forth, in part:

BANQUET AND MEETING ROOMS: A room used exclusively for a banquet, meeting or sales/display room is not subject to Colorado sales tax on charges for these uses. A room or suite with beds cannot qualify as exclusively used for any of the above exempt purposes.

Because the charge for banquet or meeting rooms is not subject to tax, the cancellation fee also is not subject to tax.

OTCs

Colorado levies sales tax *on the entire amount charged* to any person for rooms or accommodations for a period of thirty days or less (emphasis added).⁴ Sales tax is calculated on the price paid by the customer.⁵

The background information provided appears to describe ‘merchant model’ transactions in which the OTC is the merchant of record. In merchant model transactions, the sale by the OTC to the consumer is the taxable transaction and it is the OTC’s duty to collect, report, and remit sales tax on that transaction. The Colorado sales tax is due on the OTC Website Rate, as that is the entire amount charged to the customer for the right to occupy a room or accommodation.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/tax for more information about state and local sales taxes.

⁴ § 39-26-104(1)(f), C.R.S. and § 39-26-704(4), C.R.S.

⁵ § 39-26-104(1), C.R.S.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue
Office of Tax Policy Analysis